

machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

"(d) DEFINITIONS.—For purposes of this section—

"(1) the 'maintenance' of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

"(2) the 'repair' of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine."

#### **TITLE IV—EPHEMERAL RECORDINGS; DISTANCE EDUCATION; EXEMPTION FOR LIBRARIES AND ARCHIVES**

##### **SEC. 401. EPHEMERAL RECORDINGS.**

Section 112 of title 17, United States Code is amended by—

(1) redesignating section 112(a) as 112(a)(1), and renumbering sections 112(a) (1), (2), and (3) as sections 112(a)(1) (A), (B), and (C), respectively;

(2) in section 112(a)(1), after the reference to section 114(a), add the words "or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission that broadcasts a performance of a sound recording in a digital format on a non-subscription basis,";

(3) adding new section 112(a)(2) as follows:

"(2) Where a transmitting organization entitled to make a copy or phonorecord under section 112(a)(1) in connection with the transmission to the public of a performance or display of a work pursuant to that section is prevented from making such copy or phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the work, such copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such copy or phonorecord within the meaning of that section, provided that it is technologically feasible and economically reasonable for the copyright owner to do so, and provided further that, if such copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such copies or phonorecords as permitted under section 112(a)(1)."

##### **SEC. 402. LIMITATIONS ON EXCLUSIVE RIGHTS; DISTANCE EDUCATION.**

(a) Not later than six months after the date of enactment of this Act, the Register of Copyrights, after consultation with representatives of copyright owners, nonprofit educational institutions and nonprofit libraries and archives, shall submit to the Congress recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the needs of users. Such recommendations shall include any legislation the Register of Copyrights considers appropriate to achieve the foregoing objective.

(b) In formulating recommendations, the Register of Copyrights shall consider—

(1) the need for an exemption from exclusive rights for distance education through digital networks;

(2) the categories of works to be included under any distance education exemption;

(3) the extent of appropriate quantitative limitations on the portions of works that may be used under any distance education exemption;

(4) the parties who should be entitled to the benefits of any distance education exemption;

(5) the parties who should be designated as eligible recipients of distance education materials under any distance education exemption;

(6) whether and what types of technological measures can and/or should be employed to safeguard against unauthorized access to, and use or retention of, copyrighted materials as a condition to eligibility for any distance education exemption, including, in light of developing technological capabilities, the exemption set out in section 110(2);

(7) the extent to which the availability of licenses for the use of copyrighted works in distance education through interactive digital networks should be considered in assessing eligibility for any distance education exemption; and

(8) such other issues relating to distance education through interactive digital networks that the Register considers appropriate.

##### **SEC. 403. EXEMPTION FOR LIBRARIES AND ARCHIVES.**

Section 108 of title 17, United States Code, is amended—

(1) in subsection (a) by—

(A) striking "Notwithstanding" and inserting "Except as otherwise provided and notwithstanding";

(B) inserting after "no more than one copy of phonorecord of a work" the following: "except as provided in subsections (b) and (c)."; and

(C) by inserting after "copyright" in clause (3) the following: "if such notice appears on the copy or phonorecord that is reproduced under the provisions of this section, or a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section";

(2) in subsection (b) by—

(A) striking "a copy or phonorecord" and inserting in lieu thereof "three copies or phonorecords";

(B) striking "in facsimile form"; and

(C) striking "if the copy or phonorecord reproduced is currently in the collections of the library or archives." and inserting in lieu thereof "if—

"(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

"(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public outside the premises of the library or archives in that format."; and

(3) in subsection (c) by—

(A) striking "a copy or phonorecord" and inserting in lieu thereof "three copies or phonorecords";

(B) striking "in facsimile form";

(C) inserting "or if the existing format in which the work is stored has become obsolete," after "stolen."; and

(D) striking "if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price." and inserting in lieu thereof "if—

"(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

"(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format except for use on the premises of the library or archives in lawful possession of such copy.";

(E) adding at the end the following: "For purposes of this subsection, a format shall be considered obsolete if the machine or device

necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace."

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. SMITH of Oregon. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Mississippi.

#### **MORNING BUSINESS**

Mr. COCHRAN. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business until 7 p.m., with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### **TRIBUTE TO REAR ADMIRAL KENDELL PEASE, USN**

Mr. LOTT. Mr. President, I want to recognize and honor Rear Admiral Kendall Pease, United States Navy, as he prepares to retire upon completion of more than 34 years of faithful service to our great nation.

A Boston native, Rear Admiral Pease grew up in Natick, Massachusetts, enlisted in the United States Navy in 1963 and was selected to attend the United States Naval Academy. Upon graduation in 1968, he was commissioned an Ensign and began a distinguished career as a Public Affairs Officer. He initially served in the Republic of Vietnam and had follow-on public affairs assignments in Charleston, South Carolina; Naples, Italy; and Norfolk, Virginia. He served as the Public Affairs Officer for the Navy's Atlantic Fleet, the Naval Academy, and was assigned to multiple tours in Washington including the Department of Defense, the On-Site Inspection Agency and the Department of the Navy.

Since 1992, Rear Admiral Pease served as the Navy's Chief of Information. In this capacity, he has been instrumental in educating the American public about the Navy's role in protecting American interests around the world. During his watch, he led hundreds of successful efforts to communicate Navy operations in areas from A to Z, Albania to Zaire, including Bosnia, the Persian Gulf and Somalia. He also deserves tremendous credit for his efforts to communicate the need for very important Navy programs such as the SEAWOLF and NSSN submarine programs; CVN 77 and CVX; DDG 51 and DD 21; and Super Hornet. He accomplished all of this while navigating the Navy through a number of contentious issues, earning deep respect for his style of aggressively and honestly communicating all of the facts.

Most significantly, Rear Admiral Pease served as a passionate advocate for the Sailors in the Fleet—the men and women who serve far from home